IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1403 OF 2004

Tukaram Ganpati Gotkhinde, since deceased through legal heirs.] .. Petitioner](Ori.Defendants)

Versus

Akaram Ganpati Gotkhinde.] .. Respondent (Ori.Plaintiff)

Mr. S.A. Walambe i/b Mr. R.V. More for the petitioners.

Mr. G.V. Bhagwat i/b M/s. Divekar & Co. for respondent.

CORAM: R.M. LODHA, J.

DATED: 21ST JULY, 2006

P.C. :

. Heard Mr. S.A. Walambe, counsel for the petitioners.

2. The 3rd Joint Civil Judge, Junior Division, cannot be said to have committed any error of jurisdiction or of law in rejecting the petitioner's application under Section 10 of the Civil Procedure Code for staying further proceedings in Suit No.498 of 1997.

3. In paragraph 5 of the impugned order, the learned trial Judge observed thus:

> "Perused the record. Suit is old one and pending for final argument of both sides. It is pertinent to note here that present suit is relating to the landed property bearing C.S.No.774 of Sangliwadi which was not incorporated in the partition suit. In partition suit, defendant is seeking the partition of joint properties whereas in present suit plaintiff is seeking injunction against defendant. Thus both matters are different."

4. I find no justifiable ground to take different view. Writ Petition dismissed in limine.

Sd/-
[R.M. LODHA, J.]